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THE
ATTORNEY
OF THE
COVRT of COMMON
PLEAS.

OR
His Directions and Instructions
concerning the course of Practice
therein.

With sundry observations there-
upon, &c.

*Written by G. T. of Staple Inne,
Gent.*



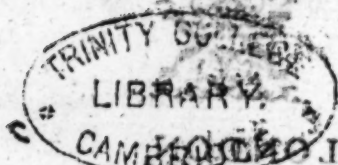
LONDON,
Printed by Thomas Badger, for Matthew
Walbanck and Henry Twyford,
1642.

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By Henry G. T. of Staple Inn,
Counsel.



Printed by Thomas Baskett, for J. Baskett
Waltham and Henry Tappin
1847.

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FINIS.

AN
ATTORNEY'S
OATH.

You shall do no falshood, nor consent to any to bee done in this Court; and if you know of any to be done, you shall give notice thereof to the Lord Chiefe Iustice and other his brethren, that it may be reformed; you shall delay no man for lucre or malice; you shall increase no fees, but shall be content with the old fees accustomed;

2 *The Attourney of the Court*

med; you shall plead no forraigne plea, nor sue no forraigne suites unlawfully to hurt any man, but such as shall stand with the order of the Laws, and your conscience.

You shall seale all such proces as you shall sue out of this Court, with the Seale thereof.

And see the Kings Majesty and my Lord Chiefe Iustice discharged for the same; you shall not wittingly sue or procure to bee sued any false suite, nor give aid or consent to the same, on paine to be expulsed from the Court for ever.

And further you shall use your selfe in the office of an Attourney within the Court, according to your learning and discretion.

So help you God.

Then the Oath of Supremacy is taken.

The

*The particular fees to bee expended
when one is sworne an Attourney.*

INprim. To the Iudges box. 20 s.
To the Secondary of the chiefe
Prothonotary who giveth you the
Oath. 12 d.

To the Cryers, Court-keeper
and other Officers. 11 s.

THen must you have a Note
from the Prothonotary, in
whose Office you enter, to the
Clarke of the Warrants, which is
usually made in this manner.

De Term. S. H. Anno, &c.

A. C. generosus Iur. in Cur. no-
no die F. isto eodem Term. in of-
fic. Altor. dicti dñi Rs. de Banco.

Or thus, A. C. Attorn. Fur. to
which the Prothonotary subscri-
beth his name.

A The Attourney of the Court

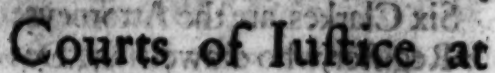
Then when you have delivered the said Note to the Clarke of the Warrants, hee will enter your name into the Roll of Attourneys names.

Who will have of you for the entering thereof, 4 s. 4 d.

And for the Rolle of that terme, 4 d.

Courts

5



**Westminster, with the
Judges and Officers
thereto belonging.**

**Westminster, with the
Judges and Officers
thereto belonging.**

Chancery.

THE Chancery, called of some *Officina Furis Civilis Anglo-rum*, because the proces which give Causes of Actions in other Courts issue out of this Court.

The Iudges of this Court are
The Lord Chancellor or Lord
Keeper of the Great Seale.

Master of the Rolles, Keeper of
most of the Records of the Court.

Six Masters or Assistants, to shew what the equity of the Civil Law is, and what is Conscience.

Clarke of the Crown is chief

6. *The Attourney of the Court*

Guardian of all matters of the Crown.

Six Clarkes, are the Attorneys.

Register, who draweth the Decrees and Orders of the Court.

Two Examiners are they which take the examination of witnesses in Court.

The Controller of the Scale is to allow or disallow all writs.

The Clarke of the Hamper, doth receive the fines for writs in real actions, and the fees for the seales of Writs and Letters Patents.

The Cursitors make all Originals.

The Sergeant carryeth the Mace before the Lord Keeper, and is to call any man before him at his commandement.

The Clarke of the Pettibagge, maketh all extents on Statuts staple and recognizances, & in his Office are all actions at Law sued, for or against Officers and Clarkes of the Court.

King's

King's Bench.

THe Iudges are the Lord Chief Justice, and three others.

Two chiefe Clarkes or Prothonotaries.

The Secondary.

The Clark of the Crown.

The Clark of the *Nisi prius*.

The Clark of the Papers.

The *Custos Brevium*.

The Philizers.

The Prothonotaries enter all the Pleadings, Orders, Iudgments and Rules between party and party.

The Secondary is the Prothonotaries deputy.

The Clarke of the Crown is to frame all the Indictments of Treason, Murder, Felony and all other crimes, and all manner of appeales: and keepeth the Records thereof.

The Clerke of the *Nisi prius*,

2. *The Attourney of the Court*

maketh forth all Records of *Nisi prius* on issues joyned.

The Clarke of the papers keepeth all Writings and pleadings, which are not of Record.

The *Custos Brevium* fileth all Iudiciall and Originall Writs, after the Sheriffs have returned them, and is chargeable if any be imbesilled from the file.

The Philizers make all proces upon originall Writs.

Common Pleas.

THe Iudges are the Lord Chief Iustice and three others.

The *Custos Brevium*.

The three Prothonotaries.

The Clarke of the Warrants.

The Philizer for every shire.

The Clark of the Essonies.

The

The Clarke of the outlaries.

The Clark of the superseded.

The Exigenter.

The Clark of the Iuries.

The Chirographer for fines.

The Clark of the Kings silver.

The Clark of the errors.

The Clark of the treasury.

THe *Custos Brevium*, hath the keeping of all writs returned in the Court.

The Prothonotaries draw pleadings and enter them.

The Clark of the Warrants entreteth all warrants of Attourney, and enrolleth all deeds, acknowledged before the Iustices of the Court.

The Clark of the Essoynes doth enter the Essoynes and exceptions in actions wherein Essoynes lye, And marketh the Rolles used in Court.

The Clark of the outlaries makes

to *The Attourney of the Court*

makes all *Cap. utlagat*

The Philizers make all manner of proces upon orig. writs before apparance.

The Clarke of the supersed. makes all supersedeas to exigents.

The Exigents make the writs of Exigents, and Proclamation.

The Clark of the Iuryes, makes the writs of *Habeas Corpus*, and *distring. Fur.* for the tryall of issues.

The Chirographer doth make the Indentures of the writ of covenant and concord on fines levied, whereof he giveth two parts to the party to whose use the fine is levyed.

The Clark of the Kings silver, doth enter fines on Record, and setteth downe the money which his Majesty is to have, according to the yearly value of the land, as the same is rated on the writ of Covenant.

Exche.

Exchequer.

THe Iudges are the Lord Treasurer and Chancellour of the Exchequer, the Lord chiefe Baron, and three others Assistants.

The Kings Remembrancer.

The Lord Treasurers Remembrancer.

The Prothonotary and foure Attorneys in the Office of pleas.

Two Clerks of the Pipe.

Two Officers of the first fruits and Tenths.

The Auditors.

The Tellors.

The Rent gatherers.

The Tally makers.

The Clarke of the Estreates.

The

II The Attourney of the Court

The Remembrancers keepe the Records, and enter Rules and Orders and Pleadings, to their severall Offices belonging.

The Office of Pleas is to enter all Common Law proceedings, and pleadings for or against the Officers of the Court, or between party and party.

The Clerks of the Pipe, make Leases and receive the Sheriffs accompts.

The Officers of the first fruits receive the money due to his Majesty, by Ecclesiasticall persons.

Dir-

Directions, Instructions
and Observations for
a Clark or Practitioner in the
Court of Common pleas.

*You must have an especiall care to
write faire, cleane and true.*

*When you are reteined in any just
and honest cause, to deale carefully,
truly and honestly, both for your
own credit, and for the good of your
Clyent.*

YOur first Writ that is to besued
forth in the prosecution of an
Action of debt, trespass, trespass up-
on the Case, Covenant, Accompt,
&c. is called the originall, which
must be made by the Cursitor of
the same Shire, in which you
will

How to sue
forth Ori-
ginals.

14 *The Attourney of the Court*
will lay your Action.

And this writ is sued forth of the
Chancery, and made Retournable
Coram Justic. in the Court of
Common pleas, at a certaine Re-
tourne.

And between the Teste, and
Retourne of the same (as also in
all other ordinary Writs, to bee
sued forth and procured upon the
same) must be fifteen dayes at the
least.

Of the
Teste of
Writs.

Note that this Writ may beare
Teste out of the Terme, because
it is to bee understood, that the
Court of Chancery is alwayes
open.

But all other processe sued forth
out of the Court of Common
pleas, must of necessity beare
Teste, sometime within the
Terme, and in the name of the
Chiefe Iustice of the same Court
for the time being.

The

The forme of an Originall upon an
Action of debt for your Precipe.

Glouc. ss. Pr. Abrahamo Barker nup
de L. in Com. tuo yoman
Ald. A. B. de Ledbury in
Com. Glou. Yeom. r. Iohi.
Hide Ar. xl. l. r. xv. Pas.

Dannett.

You must observe that in the
Ald. you write the *Defendants* name
literally, as in the Bond, together
with his Additions.

The Retourne of the Originall
in debt is thus,

Ioh. Doo.

pleg. de pros.

Rich. Roo.

Infra nom. Abrahamus nihil habet
in balliva mea ubi Sum potest.

Thomas Thinne Mil. vic.

If

16 *The Attourney of the Court*

If there be two defendants sued in the Original, the Retourne must be thus:

Infra nomin. A. & B. nihil habent in balliva mea ubi Sum possunt.

And if more than two defendants, then thus:

A. B. & ceteri Defend. infra script. nihil habent in balliva mea ubi Sum possunt.

And if you lay your Action in a City of which are two Sheriffs, Then you must Retourne your Originall with this word *nr̄s.* instead of *mea.* And also add respons before the Sheriffs names: *Respon. C. E. & R. S. Vic.*

The forme of an Originall upon an action of Trespas done with Cattle, followeth:

Glouc. p. Si A. B. pon. C. D. nu p. de H. in Com. tuo h². & armis Clausum. C. ipsius A. B. apud C. fregit, & c. herbam suam ad Valenciam C. ibid. nu p. crescen. cum

cum quibusdam donariis depast. fuit
conculcavit, & consumpsit, & alia e-
normia &c. R. oct. Hill.

Daimet,

In Battery thus, *Quod vi & ar.*
in ipsum C. apud D. insult. fec. & ips.
verberavit vul. & mal. Ita quod
de vita ejus desperabatur, & al. &c.

The Returne of an Originall in
an action of trespassse, action upon
the case; and all such as are com-
mitted *vi & armis contra pac.*

Joh. Doa

pleg. de pro.

Rich. Roo.

Infra nominat. A. C. nihil habet in
balliva mea propter quod attach. po-
test.

Note, that every debt must be due
and every action or cause of action
of Trespassse, &c. done and com-

C

mitted

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mitted before the *Teste* of the Original.

For all other Instructions for your Original, I referre to your own experience, as the nature and cause of the said writ shall require, wherein you may sufficiently be instructed by your own industry, and observations, as also by the Cursitor and book called the Register.

Of suing
forth pro-
ces upon
Original
Writs.

Your Original being thus made and retourned, you must then deliver the same to the Phillizer of the same County, City, or Shire, where your Action is layed, to have such further processe made thereon, as that present Terme wherein you sue forth the same, shall by reason of the length or shortnesse of the time allow; always observing the former Rule of 15 dayes between the *Teste* and the Retourn of every proces.

The

The ordinary and usuall Proceffe
thereupon with the Philizze are
these.

First, a Cap.

Secondly, an Al. Cap.

Thirdly, a Plur. Cap.

The Retournes whereof are
these which followeth.

*A. C. &c. defendend. infra script.
non sunt invent. in balliva mea.*

Tho. Thimpe Mil. vic.

But if you intend not to sue the
Defen. to an outlary, but that his
body may be easily & readily arre-
sted, then you need not to proceed
any further but to the Cap. only,
and deliver the same to the under-
Sheriffe of the County, and pro-
cure a warrant thereupon, and get
him arrested; which is a great
furtherance to your cause, for ex-

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petition of tryall and procuring
of Iudgement; and if hee be in a
forraigne County, then a *Testa-*
tum.

The terms
wherein to
sue to the
Outlary.

The chiefeſt Termes wherein
to ſue any matter or cauſe to the
outlary are, *Eaſter* or *Michaelmas*
Terme.

For if you commence your ſuite
in *Eaſter Terme*, you ſhall either
out-law or cauſe the party to ap-
peare in *Michaelmas Terme* follow-
ing: and if you begin in *Michael-*
mas Terme, you ſhall do the like in
Eaſter or *Trinity Termes* then next
following.

And note that you may have an Ori-
ginall Writ made Returnable of a
precedent Terme: if you
bring a note thereof to the Curſitor
within the firſt week of the follow-
ing Terme.

Of ſumo-
ing men of
eſtates,

Note, that if an Originall writ
be

be made against a Knight, Esquire or Gentlemen of worth, that hath sufficient Lands and Tenements in the same County where the action is laid: Then you may not returne the same Originall of course with a *Nihil habet*: But you ought to deliver the same writ to the under-Sheriffe of the same County, to bee retourned and executed by way of summons.

For otherwise the Def. if hee have sufficient in the same County, and a *Nihil Retorned* may bring an Action of the case, for disabling of him and his estate against the Attourney for the Plaintiff, or against the Sheriffe of the same County, that shall so disable him by a retourning of a *Nihil*.

Vpon the making and suing forth of every originall writ, If the debt or damages therein specified, do exceed 40 l. Then there

Of fines to be paid up- on originals.

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is a certaine fine due for the same,
to be paid to the King, as fol-
loweth:

In *primis*, From 40 l. to 100.
Marks, 6 s. 8 d.
From 100 marks, to 100 l. 10 s.
From 100 l. to 200 marks, 13 s. 4 d.
From 133 l. 6 s. 8 d. to 166 l. 13 s.
4 d. 16 s. 8 d.
From 166 l. 13 s. 4 d. to 200 l.
20 s.

And so consequently for every
100 marks, 6 s. 8 d.

And for every 100 l. 10 s.

In *Easter Terme*, you may pro-
cure your *Cap.* and *Al. Cap.* Re-
tournable in *Trinity Terme*; And
in *Trinity terme* sue forth your
Plur. Cap. Exigent & Prac.

In *Michaelmas Terme*, you may
sue forth the *Originall Cap. Al.*
Cap. and *Plur. Cap.* Returnable in
Hillary

Hilary Terme then next following;
and in the same Terme procure
your Exigent and Proclamation.

But if the party cannot bee arrested in the County where the Action is layed; And the Plaintiff would proceed against him more speedily, than by outlary. Then he may have a *Cap.* returned with *Non est invent.* by the Sheriffe of the County where the action is layd, and thereupon may procure a *Testatum* into the County where he liveth.

The fee of which writ is, 12 d.

And all your writs must be filled with the *Custos Brevium*, (for the time being) or else there will be error found in your proceedings.

The *Plur. Cap.* being orderly procured and sued forth and accordingly returned, must then be delivered to the exigenter of the

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same County wherein your action is layd, and he will make you an Exigent and Proclamation there-upon.

The Exigent and Proclamation must bee delivered to the under-Sheriffe of the same County where the Defendant dwelleth to be executed according to the forme of a Statute in that case made and provided, and according to the tenor and forme of the said writ.

Note That there must be of necessity 5 County dayes betweene the *Teste* and the Retorne of the Exigent, or else you shall be driven to sue forth another writ, called an *Allocatus* from the said Exigenter, and deliver to the said under-Sheriffe, to the great hindrance of your Clients cause.

Your *Allocatus* must beare *Teste* with the retorne of your former Exigent, and be retourned the
next

next returne after the fifth County day.

Note That the Exigent and Proclamation must have one and the same *Teste* and Returne, And you must truly examine all your said writs, that there be no difference or variance in the summes, names or additions from your Originall.

THe same Terme that you sue forth your Exigent and Proclamation, you must then file a Warrant of Attourney with the Clarke of the Warrants for the Plaintiff, for which there is a generall Office in that behalfe, and if you faile therein you commit error in the prosecution of your cause, to the great hindrance and hurt of your Client and danger of your selfe, in ten pound forfeited by a Statute made in that behalfe.

Of Warrants of Attourney.

The

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The forme of the Warrant of Attourney, is as followeth, which must be engrossed in parchment.

Glouc. ss. A. B. poloino C. D. (naming the Attourney) vers. T. F. nup de London gen Ald. T. F. def. in Com. Glouc. gen & R. T. D. L. gen. Ald. R. T. de cadem gen. de placito deb'.

And thus much for your instruction, how, when and where to sue forth your processe and proceed to the Outlary.

The particular fees for the same.

The fees
for the pro-
cesse and
proceeding
to the out-
lary.

FOR the Originall and *post diem*,
16 d.

For the Cap. seale and *post diem*,
1 s. 9 d.

For the Al. Cap. seale and *post diem*,

of Common pleas. 27

diem, 1 s. 5 d.

For your *Plur. Cap.* scale and *past*

diem, 17 d.

For the exigent and scale, 1 s. 7 d.

For the procl. and scale, 13 d.

For the Warrant of Attourney,

4 d.

For the Retourne of every procl.

12 d.

Note, That for every tenneth that you proceed in the prosecution thereof, you are to take a severall fee, Being 3 s. 4 d.

THe exigent and procl. being Retourned, you must then file the procl. with the *Custos Brevium*, and if you file the same, or any other writ there before the Retourne of the same be past, or upon the Retourne day, then you must pay nothing for filling the same, Otherwise for every writ,

4 d.

A

*A carefull and a good husband will be
provident for his owne benefit to
save Post diems, as his expe-
rience will teach him.*

Note, That if you file not your
Writs in the same Terme
wherein they are Retournable,
Then you shall be driven to pay
when you go to file them with
the *Custos Brevium*, for the *Post
Terminum* of them, which is,

For every writ every Terme the
same is unfilled, except Exigents,
for which you pay only one *post
Terminum*, 20 d

And sometimes your writs un-
filled, may be refused by reason of
a Caveat procured from some of
the Iudges in that behalfe, to your
great disgrace, and the danger of
your Clyent, which Caveat is cal-
led a *Ne recipiatur*.

The

THe Exigent being Retourned by the Sheriffe of the County and you being willing to procure processe of Outlary against the Defendant to arrest him upon the same, he being Outlawed; You must then carry the Exigent so retourned to the Clarke of the Outlaws for the time being, and he will make you a writ or writs, into any County that you shall desire him, yea, into many severall Counties at one time; Because those writs are as well *Ex parte Domini Rs.* as for the Plaintife.

*There be two severall Writs of
Cap. utlagat.*

The one called, a generall *Cap. Utlag.* being against the body of the Defendant only.

The other speciall, being against his body, lands and goods.

The

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The fees of Cap. Utlag.

The filing of the Exigent with the Clarke of the Outlawes in the same Terme,	4 d.
If be with a <i>Post Terminum</i> ,	20 d.
The generall <i>Cap. utlag.</i>	10 d.
The speciall,	2 s. 4 d.
The Scale of either,	1 d.
The fee,	3 s. 4 d.

And so much for suing a man to the Outlary, and procuring processe thereon.

NOW how to discharge or avoid the same, the parry being therupon taken, or otherwise, which may be done diverse dayes as occasion shall serve.

How to reverse an Outlary.

First and most usually, you may reverse an Outlary by error to be

be found in the Retourne of the Exigent, which may be committed many ways, either by the negligence of the Clark that shall so returne the same, in mistaking the County dayes, in not allowing a sufficient time between either of them in misnaming of the person, or omitting, or mistaking of the Sheriffs name to the same writ or Retourne, or otherwise as experience and practice will better instruct you.

Secondly, by the like errour be to bee found in the Retourne of the Proclamation, which may be committed many wayes as aforesaid.

Also in the difference of the additions, or else in the Retourne, betweene the Exigent and Procl. which must be found out by careful search, and observation of them, and is too long to capitulate.

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Also for want of the filing and Retourne of the procl. with the *Custos Brevium*.

Also for want of the Retourne or in misentry or mistaking in the Originall *Cap. Al.* or *Plur.* which may be committed many ways as aforesaid.

For all which there must be diligent search made with the *Custos Brevium*, and elsewhere as occasion shall be.

And if any sufficient error may be found in any of these things, as aforesaid.

Then the file of writs, in which the same matter is filed, must be brought by the said *Custos Brevium* into the open Court, to be seen and perused by one of the Judges of the same Court. And the errors to be allowed, or disallowed, according to his judgement and discretion.

Note

Note, That upon the Reverfall of an Outlary for want of Proclamation in all cases, and for any other default if the debt or damages demanded, amount to 20 l. or above. There must bee speciall Bayle entered by the Defendant in open Court, to answer to the Plaintife suite and pay the debt or damages demanded, if the Defendant shall be condemned in the action, which bayle must be taken out upon the remembrance in the same Prothonotaries Office, where the same is reversed. And then if the Party Outlawed, be taken and arrested, or feare to be so upon the same Outlary, A Writ of *Superse-
deas* shall be made to the Sherif of the same County where he is, or feareth to bee taken for his discharge, which Writ is to be made and signed in the same Prothonotaries office.

D

Vpon

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Vpon the reversall of every Outlary in this nature, the Defendant is bound by his Attourney to appeare, and to accept of a Declaration at any time within two Termes then next following, after the said reversall, and then to answer according to course of Law.

Vpon the reversall of every Outlary, the Attourney ought to have a Note and Certificat thereof from the Prothonotary to the Clarke of the Outlaries.

That no further processe may be made against the Defendant concerning the same, and to see the booke of Outlaries discharged.

For which he must pay, 2 s. 8 d.

The fees of these are uncertaine, and therefore too long to capitulate.

But the certaine fees are these.

For

For search with the *Custos Bre-*
vium, for every particular
 search of every ten, you have
 need to use, 5 d.
 For carrying the bundle of writs
 to the Hall, 2 s. 9 d.
 For putting in the Bayle, 3 s. 10 d.
 To the Boxe, 1 s.
 To the Prothonotary for entring
 the reverfall upon Insufficiencie,
 of the return, 8 s.
 For the Judges fee, 4 s.
 To the Clarke of the Outlawes,
 2 s. 8 d.
 For the *Supersedeas*, 2 s. 7 d.
 For the allowing thereof with the
 Sheriffe, 2 s. 4 d.

AN Outlawry also may bee re-
 versed, although there be no
 error in retourne of the Exigent,
 or Proclamation, and although the
 Proclamation bee filed with the
Custos Brevium: If that the same

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Proclamation were not awarded, according to the forme, and effect of a Statute in that case provided within the same County, and at the Church doore, where the Defendant hath been and was *Commorant*. and residing *infra annum & diem*, then next before the same suite was begun, and commenced, or that the Defendant be misnamed therein; And this Reversall must be done by way of a plea drawne by a Clarke to that purpose, for which you shall finde sufficient presidents, both in my Lord Cooke his Booke of Presidents, as with many of the Prothonotaries Clarkes; To which plea the Kings Attourney Generall his hand must be procured.

This is a long tedious and chargeable way and not usuall, if the Plaintife be not found obstinate, or that other sufficient error cannot be

be found, and the fees uncertaine,
which I referre to your better pra-
ctice.

AN Outlary may be also rever-
led by pleading the Kings ge-
nerall pardon, which is usually
granted at every Parliament, if so
be the Defendant were Outlawed
before the summons of the said
Parlament. Which must be done
by way of *Scire facias*, directed to
the Sheriffe of the same County,
wherein the action was first layed.

And if the Sheriffe do retourne
Scire feci, upon the first *Scire fa-
cias*, then you shall need but one
writ of *Scire facias*; If not, then
you must have two returned with
Nihil, in this manner.

*Infra nominat. A.C. (videlicet la
Plaintif) nihil habet in balliva
mea per quod eum Scire facere*

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sum, nec est invent. in eadem.

A.C. mil. vic.

ANd these two *Scire facias*'s must first be drawn by a Prothonotaries Clarke, and then entered upon record in the same Office, and a *Supersedeas* made, and a Certificate also made *ut supra*, from the Prothonotary to the Clarke of the Outlaries, that from thenceforth no further proceſſe may be made against the Defendant; and then the *Scire facias* for the Reversall to bee taken out upon the Remembrance in the said Prothonotaries Office, and upon the Docket there, with the number Roll, upon which it was entered.

Wase.

THat in this Case also the Defendant must stand *Rectus in Curia*, by his Attourney to answer

swer the Plaintiff *ut supra*, but no Bayle shall be put in.

The fees thereof.

I*n* *primis*, For the Coppy of the Exigent, 8 d.

The two *Scire facias*'s and seales, 5 s 2 d.

The Retourne, 2 s.

The filing of them, 8 d.

The taking them out into the Remembrance, 1 s.

The Coppies, 3 s 4 d.

The Prothonotary, 5 s. 4 d.

The *Supersedeas* if he be arrested, 2 s. 7 d.

The allowing thereof, 2 s. 4 d.

The Certificate, 1 s.

The Clarke of the Outlaries, 2 s. 8 d.

The Attourney's fee, 3 s. 4 d.

AN Outlary also may be reversed by a writ of Error upon a suggestion

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tion of Errour in the proceedings, as
the want of the Warrant of Attour-
ney, the not filing of the Originall,
Cap.al. or pl. and then your course
therein is as followeth.

First, You must get the Coppy
of the Exigent or Cap. &c.
Then carry the same to the Cursi-
tour of the same County where
the Action is laid, and where the
Defendant was outlawed, then
that writ sealed under the great
Seale of England, brought to the
Lord Chiefe Iustice of the Com-
mon pleas, or his Clarke of the
Errours for the time being, with
the cobby of the Outlary, with
the Cause of Errour fairely writ-
ten, and subscribed under the hand
of the Attourney for the Defen-
dant; And the said Iustice his
hand procured thereto for the al-
lowing thereof, and thereupon you
must procure the Clarke of the
Er-

Errours of the Common pleas, to make a *Superfedeas* to the Sheriffe of the Countie where the Defendant is, or seareth to bee arrested for his discharge, and from him procure a Certificate to the Clarke of the Outlaries, *ut Supra*: the charge of which *Superfedeas* is 32 s. 4 d. Besides the search and copy of the Outlary.

Note. That if the Plaintife will, he may drive the Defendant to an extraordinary charge to certifie all the proceedings of the Originall *Cap. al. pl.* Exigent and Proclamation, &c. into the Kings Bench; and thereupon assigne the Errours.

But usually in this Case, if the Defendant by his Attourney will or do appeare upon a new Originall, the Plaintife will be contented.

And this is the most usuall and ready way for the discharging of
an

an Outlary (especially in the vacation) if the Defendant bee either arrested, or feare to be arrested; But Bayle must be put in, if the debt or damages amount to 20 l. as in like cases.

ANd in this case, also the Attourney for the Defendant doth usually take money of the Defendant for the Declaration, and his fee against the next Terme at the time of the delivery of the *Supersedeas*, especially if the Defendant be not well knowne unto him, and a Warrant under his hand to appeare, plead or confesse the action.

ANd lastly, If of necessity the Case do so require and none of these courses will serve, a *Supersedeas* may be procured for the enlargement of the body and restitution of goods, taken by vertue of
of

of a speciall *Cap. utl.* by the Kings
Majesties speciall pardon.

A thing not usuall and seldome
seen, that any man is driven there-
unto, and the fees uncertaine.

HAVING formerly set down the
generall and particular instru-
ctions, and directions to sue to the
outlary, and to arrest thereupon,
and how to reverse the same both
for the Plaintiff and Defendant :

*It followeth now to proceed to De-
claration, Issue and Judgement
after apparance made by Superseas
to the Exigent, or to any ordinary
Arrest upon the meane processe.*

The

The man-
ner of pro-
ceeding to
Declarati-
on, Issue,
and Judge-
ment, &c,

THE Defendant having appea-
red by Special Bayle, or other-
wise in the Philizers office upon
the *Cap. Al.* or *Plur.* where the
same was sued forth, or by *Super-*
fedeas to the Exigent, You must
see what Attourney doth appeare
for him.

And then you must declare up-
on your Bond, Bill, Trespasse, or
otherwise as your Case requires,
alwayes observing this Rule, That
there be no difference betweene
the additions in the writs or sums
therein conteined, and your De-
claration, for if there be, the De-
fendant may plead variance there-
in and abatement to the writ.

If you be not skilfull in drawing
Declarations or pleadings your
selfe, your best course is to retaine
a Prothonotarie's Clarke to draw
and enter your causes for you.

By

By the course of the Court the Defendants are to answer the same Terme they appeare, if the writs be retournable at the beginning of the Terme, especially in issue Termes, but in other Termes if the actions be not laid in *London*, the Defendants have for the most part imparlances or time to plead till the next Terme.

Note, That there be two kinds of Impar-
Impar-
lances, the one Generall, the other speciall, After a generall Imparlance, the Defendant cannot plead in abatement to the writ, ex-
communication or the like, nor any priviledge out of another Court, as a priviledged man.

But after a Speciall Imparlance many pleas may be pleaded which after the Generall Imparlance cannot be allowed: If a Speciall imparlance be prayed, you must take for the entry thereof,

2 s.

If

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**Of entering
conditions**

If the Attourney for the Defendant upon receiving of the Declaration, do not crave that the condition of the bond may be entered with the Imparlance, and do not pay for the same, Then hee is debarred from pleading of Conditions performed at any time after without moving the Court and paying 5 s. to the Iudges boxe.

**Of Rules
to answer.**

Rules to answer must bee entered in one of the Prothonotaries office, where the Attourney for the Plaintiffe doth usually enter his Causes by the Secondary of the same Office upon the Bill of pleas or in a common remembrance, for which there is 4 d. due, and upon the expiration of the same Rule, you must signe Iudgement with the Prothonotary for want of answer.

Note

Note, That if the Attourney for the Plaintiff do not declare against the Defendant upon his appearance, within reasonable time, in the Terme after the appearance made, then the Attourney for the Defendant may also enter a Rule in the Bill of pleas, against the Plaintiff to declare, and thereupon cause a *Non proc.* to be entered with costs for unjust vexation: For which he shall have Execution against the Plaintiff; But if the Plaintiff sue as executor, he shall pay no costs upon any Non-suite. Of Non-suits.

THe next Terme after the Imparlance, the Attourney for the Plaintiff may call to the Attourney of the Defendant, to answer to the declaration, and if hee do not plead in due time, give him Rule to answer, which done and Of Judgements.
the

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the Rule expired, hee may enter Iudgement against the Defendant by *Nihil dicit*, for the debt and costs, as is fit and usuall in such Cases, as is before expressed.

BY usually if the Plaintifes action be just and right, and for good debts or just cause of action, the Attourney for the Defendant will yeeld to Iudgement, either by way of *Non sum informatus*, confession or otherwise, So that Execution may be stayed, and no pro-
cessse made for the Plaintiff against the Defendant, untill such time as both the Attourneyes shall agree upon.

Which must be carefully looked unto by the Attourney, for the Defendant, and done by putting his hand to the Attourney's dog-
get booke, for the Plaintife in this manner.

Non

London ss. Kent pro Rogers 2

Vicars pro Elford 3

Non sum informat. ita quod esset
executio usque Cr. Trin.

Per Thomam Vicars.

Vpon which Iudgement you
must get cost taxed by the Pro-
thonotary.

IF the Attourney for the Defen-
dant do plead unto the action,
then you may joyne issue and go
to tryall by *Nisi prius*, as occasion
shall serve, at the next Assises hol-
den for the County where the a-
ction is laid, or where the Venue
riseth, and then the proceedings
are in this manner following.

Of Tryals
by *Nisi
prius*.

IF the defendant plead conditions
performed, that is, That he hath
paid the money, at the day and
place where it ought to bee paid

B

ac-

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according to the condition of the Obligation, and that the money was to be paid in another County, and not in the same where the action was laid: Then must the issue and *Nisi prius* bee tried in the same County, where the money was to bee paid, within the same County where the action was laid.

Note, That some actions are locall, and some not; and some are reall, some mixt, and some personall: Every personall action as an action of debt, trespass, covenant, battery, &c. may be layd and commenced in any County whatsoever, according to the discretion of the Plaintiffe, although both the Plaintiffe and Defendant do remaine and dwell out of the same, and every reall and mixt action is to be tryed and layd in the same County where the
cause

of the Common pleas. 31

cause of the said action groweth,
or the lands, tenements, &c. do lye.

*And so are actions of Trespas for
Trespas with Cattle or the like.*

IF at the tryall of any *Nisi prius*,
the witnesses of the Plaintife or
Defendant, will not voluntarily
appeare without proces, to testifie
the truth of their knowledge in
the matter or cause in question;
Then you may have a *Subp. ad te-
stificandum*, for the said witnesses
out of the Prothonotaries Office,
and therewith to serve them, and
to compell them to appeare.

The fee is, 2 s. 7 d.

When you proceed to Triall;

YOU must first enter the decla-
ration with the issue as it is
joyned upon Record in the Pro-
thonotaries Office; And if the A-
ction bee layed in any County;

E 2 then

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then you may go to Tryall by *Nisi prius*, the next Assises to be holden for the said County, or else in the City where the Action is layed.

And make out a *Venire fac.* upon the issue, and get the same returned by the Sheriffe of the same County or City. And upon retourne thereof, you must also sue forth a *Habeas Corpora Fur.* & deliver the same also to the Sheriffe, and get the same also returned before the Assises.

Note, That If a cause be brought to tryall and a *Habeas Corpora Fur.* be delivered to the Sheriffe who summons the Iury; And for some reason you deferre the tryall untill some longer time; Then when you bring it againe to tryall you need not be at charge of a second *Venire fac.* But you may take a Copy from the *Custos breuium* of the first writ. (if you kept it not in

in your hands) paying him for it,

8 d.

And for the search, 5 d.

Vpon which Copy or old writ

the Clarke of the Iuries will make

you an *Al. habeas Corp.* or *Plur.*

Paying for it (if in debt) or Tres-

pass, 10 d.

And in other actions, 1 s. 4 d.

And for the continuance, 4 d.

THen you must sue forth your
Record of *Nisi prius*, ingrossed
in parchment Verbatim according
to the Record entered in the Pro-
thonotaries Office, And then exa-
mine the same with the Protho-
notary, if it be upon an issue joy-
ned the same: And then carry the
same to the Clarke of the Treasu-
ry (for the time being) giving him
such fees for signing and making
up the Record as are hereafter
specified.

But if the issue were entered of

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a former term, then must you deliver the paper books of the issue to the Cleark of the treasury who will examine the same by the Roll and make up the Record thereupon.

Which done and the same sign'd by him or his deputy, you must seale the same with the Lord chief Iustice of the Common Pleas for time being, who hath a seale for that purpose.

And then deliver the Record so sealed together with the *Habeas Corpora Fur.* to the Clarke of the Assise for the same County where the matter is to be tryed.

The generall fees are these.

For the *Venire fac.* 2 s. 7 d.

For the Retorn thereof, 2 s. 4 d.

For the *Post diem*, 4 d.

For the *Habeas Corp. Fur.* expediti-
on and seale, 2 s.

For summoning the Jury, 12 s.

If

If in London or a Corporation,

but 4 s. 4 d.

For signing the Record with the
Clarke of the Treasury, if the
same exceed not three sheetes,

2 s.

For every sheet exceeding, 4 d.

For examining the Jury, 4 d.

For writing the Record,
for every sheet, 4 d.

For examining the same with the
Prothonotary, 12 d.

For the Seale, 2 s. 2 d.

These are the common fees upon an

action of debt.

AT the Assises you are upon
the delivery of the Record of
Nisi prius, to the Clarke of the As-
sise, to pay the Iudges fee, to re-
teine your Counsell, and produce
your witnesses for the tryall of the
truth of your cause, according to
the issue.

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*The fees whereof at the Assises
are these.*

For the Iudges fee in putting in
the Record of *Nisi prius*,
11 s. 8 d.

To every Counsellor you retaine
at least, 10 s.

For reading the Record, 1 s.

For the Marshalls fee, 2 s.

For the Iury 8 d. a peece, 8 s.

To the Bayliffe that keepes the Iu-
ry, 2 s.

For the Cryer, 1 s.

For the Oath of every witnesse,
4 d.

*These are the ordinary fees at Assises
in Counties.*

BVt if the tryall bee had before
the Lord Chiefe Iustice of the
Common pleas in *London*.

These

*These are the common fees to be
added to the former.*

FOr the green cloth, 1 s. 6 d.
To the bar keeper and Hall
keeper, 2 s.
To the Iudges groome or foot-
cloath man, 1 s.
To procure the Record to be
read,

THe tryall being had and ver-
dict passed for your Client,
at the next terme following, you
are to call for the Retourne of the
Postea from the Clark of the Assise,
and thereupon to bring the same
to the Prothonotary to get costs
assessed ; for which you must
bring him a Bill of disbursements
under your hand (if your charges
have been extraordinary, or other-
wise you shall not need so to do)
and thereupon cause Iudgment to
be entered. *The.*

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The generall fees are these which follow.

For returne of the *Postea*, 2 s.
For signing the Costs, 1 s.
For entering the Iudgement if the
Iury did fully appeare, 2 s. 4 d.
If there were a Tales, then more,
2 s.
For the Coppy of the Iudgement,
1 s. 4 d.

Of Execu-
tions.

WHich done, you may then
thereupon procure proces
and writs of execution by *Cap. ad*
satisfact. fieri. fact. Elegit, or o-
therwise, according to your desire,
and as the nature of your action
shall allow or require.

NOte, That the *Cap. ad satisfac.*
is against the body only: The
Fieri fac. against the goods only,
& the *Elegit* against the moyety or
any

any halfe of his Lands and Tene-
ments, and all his goods and Car-
tle, (his Oxen and Plough,
Cattle only excepted) to have and
to hold the goods as his owne
goods, and the said moyety of
the lands untill his debt and costs
shall bee fully satisfied and paid:
But note this, that after an *Elegit*
executed and filed, you can never
have any other execution.

And note also, that if you first sue
forth a writ of *Fieri fac.* against the
goods of the Defendant, and by
vertue thereof levy part of your
debt, and not the whole, then you
may afterwards have a *Cap. ad sa-
tisfaciendum* against his body, or
an *Elegit* for the rest; But if you
first imprison his body by vertue
of a *Cap. ad satisfaciendum*, then
you cannot have a *fieri fac.* against
his goods, or an *Elegit*. You
have severall Iudgements against
severall

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severall men for one and the same debt, They being joyntly and severally bound for the same; you may have two or three severall executions against them all, until the debt and costs bee satisfied by one of them: But cannot have the whole of every of them.

And if the Defendant bee in another County, and not to be found in the same County where the action was laid, then you must sue forth a *Cap. ad satisfac.* into the same County where the action was layd, and get the Sheriffe to retourn a *Non est inventus*, and then sue forth a *Testatum* into the County where he is to be found.

The particular fees due to the Prothonotary for common entrees are these following.

FOR entring of every cōmon action of debt or trespass, & for every
ry

of Common pleas. 61

ry common plea in the same, 1 s.
For entry of every Declaration in
actions on the case, covenant and
the like, and pleas in the same, not
exceeding 3 sheets, 2 s.
And for every sheet above three, 8 d.
For the entering of every common
condition, 1 s.
For every speciall condition not
exceeding three sheets, 2 s.
And if the same exceed 3 sheets,
then for every sheet, 8 d.

*Your Common and usnall pleas to
Bonds, Bills, Trespasses, or other
common Actions are these
following.*

Conditions performed.

Salvat ad diem. To a Bond.

To a Bill penall:

*For to a single Bill it is not
allowed.*

Non

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Non est factum.

Plene administravit :

Ne anques exec.

Per duces.

Per minas.

Non Cul.

Non Cul. al nouvel assignment :

De son assault demesne :

Denis age.

Non assumpsit.

Nil debet per pr'iam.

Nil debet per legem.

IF the debt grow for meat, drink, lodging, or apparell had by an Infant; Then the Defendant cannot plead *Denis age*.

When you joyne issue upon a Bond; where the Defendant pleadeth not to the condition of the Bond; there the Plaintifes Attourney upon delivery of a copy of the issue, never maketh a cobby of the condition, as when he pleadeth *Denis age*, *per duces*, or the like.

Vpon

VPon the entry of every Iudgement by *Non sum informatus*, or *Nihil dic.* the Attourney for the Plaintife is to put in two Warrants of Attourney in the same terme, wherein the Iudgement is entered; the one for the Plaintife, the other for the Defendant: And upon every issue joyned, one for the Plaintife only; But if the Defendant appeared upon the exigent, and Warrant of Attourney has put in for the Plaintife, at the suing forth of the Exigent, then the Plaintife upon issue or Iudgement shall not need to put in another Warrant of Attourney for himselfe.

Of Warrants of Attourney

The

In every Action of Treasoury
the Plaintiff shall put in a Warrant of Attourney
for the Defendant within the first Term after the
Entry of the Issue.

Of Warrants of Attourney

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The formes are these.

London s. A. C. po l'o. suo Willm
Johnson vers. C. nup de T. in
Com E. yeoman ald. G. C. de T.
in Com Ebor. yeoman de placit.
debet.

London s. G. C. nup de T. in Com
Ebor. yeoman Ald. C. de T. in
Com Ebor. yeoman po l'o. suo
T. A. vers. A. C. de placito deb.

Or otherwise as the nature of
the action is in Placito Tñsg. in
placito conventionis fracte, &c.

Which Warrants of Attourney
must be made altogether in a piece
of parchment, written in Court
hand, and filed with the Clarke of
the warrants.

Of Writs
of Inquir.

IN every Action of Trespasse
covenant, action upon the case,
Bat-

Battery and the like actions, if the same be confessed, or a Iudgment had against the Defendant, by *Non sum inform. Nihil dicit* or otherwise and not by tryall of *Nisi prius*; Then upon the entry thereof before you can damages sustained by the Plaintife therein, or the costs of suite, you must sue forth a Writ of Inquiry of damages, directed to the Sheriffe of the County where the action is layd, who will accordingly execute the same by the oath of twelve men, as in the case of tryall before a Iudge, by *Nisi prius*, of which time of execution thereof 8 days notice must be given to the Defendant or his Attourney, which Writ is to bee made and signed in the same Prothonotary's Office, where the Iudgement was so entered as aforesaid; And thither returned, and delivered to the Prothonotary, that damages and costs may be

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Of damage
cleere.

entered upon the said Iudgement accordingly; and thereupon the Plaintife may sue forth his Writ of Execution.

FOR every twenty shilling that is given by the Iury in any such case, if the damages do come to 5 markes, the Prothomothary is to have for his fee 2 s. before he will signe the Iudgement or suffer the damages and costs to bee entered upon the Record, which is called damage cleere.

XC. For Example.

IF there be 20 l. given for damages, the Prothomothary fee is, 40 s.

If 40 l. 4 l.

If 100, 10 l.

And so according to that rate,
Besides the ordinary fees for entering the Iudgement.

The

The Clarkes fees of the Prothono-
tary office are these.

For every common Declaration
in Debt, Trespasse, Assault
& Battery, for every sheet, 4 d.

For every speciall matter as co-
venant title of land, or reall a-
ction, for drawing the same, for
every sheet of the Plaintiffe,
8 d.

And for drawing every speciall
plea in Barre of the Defendant,
8 d.

For drawing every Replication,
rejoynder, or surrejoynder, eve-
ry sheet, 8 d.

For every sheet in drawing a pro-
hibition, 8 d.

For every sheet in an *Andita Que-
rela*, 8 d.

For every case or filing, 2 d.

For every writ of *Testatum*, 4 d.

For every *Supersedeas*, 8 d.

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For every other Iudiciall Writ,
8 d.

But if the writ be speciall and long
as a Prohibition, &c. Then every
sheet, 4 d.

*The Prothonotary fees for signing
Writs.*

For every *Cap. ad satisfac.* or *Fieri
fact.* 4 d.

For every *Testatum*, 8 d.

And for every special writ, 1 s. 4 d.

IF at a tryall by *Nisi prius*, the Iury do not appeare, so that there be not 12 to make up a full Iury; Then must your Counsell crave of the Iudge a *Tales de Circumstantibus*, to make up a full Iury to bee retorned by the Sheriffe; and then you are to pay the under Sheriffe for the same.

Vpon the entring of every speciall Verdict, the Prothonotary is
to

to have for every sheet, 8 d.

And the Clarke for drawing every sheet, 8 d.

To every speciall plea, replication or rejoinder, and to every demurer, in what nature soever you must procure a Sergeants at Law his hand, his fee is at least 10 s.

Note, That upon every speciall Verdict and demurer, the Clarke is to make six severall books; One for the Plaintiffe, one for the Defendant, foure other for 4 Iudges.

For every sheet whereof, he is to have in actions personall, 4 d.

In action reall or mixt, 8 d.

Note, That the Clarke of the Prothonotary Office, which is the Clarke for the Plaintiffe, is to draw as well the Declaration, for the Plaintiffe, give copy thereof to the Defendant, and to draw the generall pleas in barre for the De-

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fendant, and all other proceedings therein, as well for the Plaintife as for the Defendant, and to take fees for the same of both sides, as cause shall require.

If after Iudgment had and entered the Defendant be not easily to bee arrested, then may the Plaintife proceed to an Outlary after Iudgement against him.

The course whereof is thus.

The manner to proceed to an Outlary after Iudgment.

First, Then he must cause a *Cap. ad satisfac.* to bee made for the debt and costs, as in the Iudgment made into the same County where the action was laid; and get the same retourned by the Sherif with a *Non est invent.*

Then he must carry the same to the Exigenter of the same County, who will make an Exigent

gent thereupon, which must be delivered to the under Sheriffe to be executed and retourned accordingly, as in other actions before mentioned upon the meane proceffe.

Note, That in this case there shall need no Proclamation at all against the Defendant, to give him notice thereof.

THe Exigent being retourned, you may sue forth the proces of Outlary, from the Clark of the Outlaries either generall or speciall, as in an action of debt, afore specified; whereupon the Defendant, if he be arrested, cannot bee discharged without satisfaction to the Plaintife, an reversing or pardon of the Outlary by sufficient error found.

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This is the utmost and last proceedings that the Common Law doth or can afford in any case whatsoever

The fees are as follow.

For the <i>Cap. ad sat.</i>	13 d.
Returne thereof,	4 d.
For the <i>Post diem</i> ,	4 d.
For the Exigent,	1 s. 7 d.
For the Returne thereof,	4 d.
For the generall <i>Cap. utl.</i>	11 d.
For the speciall <i>Cap. utl.</i>	2 s. 5 d.

Note, That in this case you may have either generall or special *Cap. utl.* into as many severall Counties as you will, either in *England or Wales.*

Note, That no procelle whatsoever issuing and to be made in or out of the Court of Common Pleas,

Pleas, can be directed or executed to or by any under-Sheriffe in *Wales*, But only Elegits, Exigents, Writes, or Proclamations upon the meane processe *ut supra*, Cap. *mtl.* Generall or Speciall, upon the meane processe, or upon Outlary after Iudgment.

If the Defendant be Outlawed after Iudgment, if he cannot be arrested within a yeare and a day, yet the Plaintife shall not need to renew Iudgement by way of *Scire fac.*

But it is otherwise if he bee not Outlawed, for then after a yeare and a day, the Plaintife must renew his Iudgement by *Scire fac.* before hee can have execution against the Defendant, which is to be done in this manner following.

First, The Plaintife must sue forth a *Scire fac.* against the Defendant. Of *Scire fac.*

pendant, in the County where the action was laid directed to the Sheriffe, to give notice to the Defendant to appeare, and shew cause why the Plaintiffe should not have execution against him for the debt and costs formerly recovered.

To which Writ, if the Defendant can shew any just cause as a Release, Satisfaction or any other just Cause, or sufficient discharge: Then he may appeare and plead in barre his discharge.

If the Defendant upon Retorne of the same *Scire fac.* do not forthwith appeare and plead, the Plaintiffe shall have present execution against him.

But if the Defendant dye after the said Iudgement obtained, and before satisfaction of the said debt, had unlesse the Sheriffe do retorne *quod scire fecit, &c.* upon the first *Scire fac.* then the Plaintiffe must sue

sue forth a second *Scire fac.* against the Executor or Administrator of the Defend; and upon their second default the Plaintiff then shall have present execution against them.

Note, That these severall Writs are to be made and sued forth together with the Execution in an out of the same Prothonotarie's Office, where the first Iudgement, was entered and the said writs of *Scire fac.* together with the new Iudgment had thereupon to be entered upon record in the same office, and to be filed with the *Custos Bre.*

The severall fees are these.

For search in the Dorket for the number Roll, 4 d.
For searching in the Treasury, 4 d.
For the Copy of the Iudgement, 2 s.
For

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For the Clarke for making the
count, 8 d.

To the Prothonotary for signing
it, 16 d.

For the scale of it, 7 d.

For the retourne with a *Nihil*. 1 s.

For the retourne with a *Scire feci*,
2 s.

For entring the Iudgement by de-
falt, 4 s.

For the Copy, 2 s.

For taking the same into remem-
brance, 1 s.

For the Rule, 4 d.

For a Warrant of Attourney, 8 d.

*Vpon these proceedings duly and tru-
ly performed, the Plaintife may have
Execution against the Defendant,
by Cap. ad satisfaciend, by Elegit
or otherwise at his pleasure, as is spe-
cified in Writs of Execution, Vt su-
pra.*

Pro-



Prosecution to Judge- ment, and Execution upon speciall Bayle.

IF the Defendant be arrested by
Cap. Al. or Plur. And the Plain-
tife hold him not to be suffici-
ent to answer the debt or damages
contained in the Writ, the same a-
mounting to 20 l. or above. In this
case the Plaintife upon the returne
of the Writ may crave speciall
Bayle to bee put into his action,
which the Defendant must put in
before some Iudge of the Court
who will accept of such Bayle, cal-
led *Manucaptor* as the validity or
weight of the cause, doth require,
or in his discretion shall be thought
fit.

If

IF the apparance bee upon arrest by *Cap. Al.* or *Plur.* then the Bayle, must bee taken and entered by the Phillizer of the same County, where the action was layd; and how made the said proccesse.

BVt if the Defendant be arrested in the Major Baylifs or Sherifs Court of any City, or Corporation, and the Defendant by Writ of priviledge, or *Habeas Corpus*, do remove the same out of the same Corporation to bee tryed at the Common Law.

Then the Bayle being taken by any Iudge of the same Court must be entered in the same Prothonotary Office, where the said Writ. issued and was sued out.

THe Defendant being as afore-
said Bayled, the Plaintife may
pro-

proceed and declare against him as the nature of his cause and action shall require; observing the same forme and manner in every respect and point, to procure Iudgement and Execution, by way of *Nihil dicit*, *Non sum inform*. Confession of the action, Tryall by *Nisi prius*, or otherwise as is formerly set down and expressed upon appearance by *Superfedeas*.

ANd the Plaintife having obtained Iudgement against the Defendant, and perceiving that hee is not easily to be arrested and taken in Execution, or not sufficient to satisfie the same; But knoweth the Bayle to be better able.

Then the Plaintife may at his choyce leave the Defendant, and prosecute the Bayle, in this manner following.

First,

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First, The Iudgement being entered, he must sue forth Execution by *Cap. ad satisfaciendum*, against the Defendant, directed to the Sheriffe of the same Countrey, where the action was first laid; and upon the Retourne thereof get the same Returned; by *Non est invent.*

Then he must procure a Writ of *Scire fac.* against the Bayle, to shew cause why the Plaintiffe should not have execution against them according to the recovery or Iudgement, so had against the Defendant, which Writ must bee directed to the Sheriffe of Midd. where the Records of the Bayle and Iudgement doth remaine: and if the Sherif do retourn a *Scire feci* upon the first Writ, then there need no second Writ to be made,
But

But if he retourne a *Nihil*, Then there must bee a second Writ of *Sine fac*. Which being retourned likewise with a *Nihil*, then the two writs of *Sine fac*. must be taken out upon a remembrance in the Prothonotary Office; with the Retournes of them, and Rules thereupon given; and filed accordingly with the *Custos breuium*. And then upon if the Bayle shew not cause to the contrary Iudgement by Default shall be entred against them in the said Prothonotary Office, for the somme in which they became Bayle. Whereupon the Plaintife may take Execution out against them, either by *Fieri fac.* or *Elegit*, but not by *Capias ad satisfaciendum*.

Note, That in this case, notwithstanding the Plaintife may arrest and sue the Bayle by originall at the Common Law, for the sume

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for which they became Bayle, and
arrest their bodies by *Cap. Al.* or
Plur. or sue them to the Exigent
thereupon, and declare upon the
said Recognisance, using all pro-
ceedings therein, as in an action of
debt. But in this Case the action
must bee layd in the County of
Midd^e only, where the Records do
lye.

ANd if the Bayle cannot bee
arrested in the County of Mid.
upon a *Cap. &c.* You may returne
a *Non est invent.* and sue forth a
Writ of *Tessatum* thereupon, and
arrest them in any other County
where they are to be found, obser-
ving all the proceedings, as in an a-
ction of debt.

How

How to prosecute a
Writ of Errour, and Re-
verse a Iudgement if any
cause of Error bee to bee
found.

As there are diverse Causes for-
merly set down how to reverse an
Outlary, so there are some of them may
serve to reverse a Iudgement, which
notwithstanding, I will particularly
relate.

After a Iudgement had and
recovered by *Non sum in-
formatus*, Confession or o-
therwise, if it be not by triall of
Nisi prius, these Causes of Errour,
or any of them, being duly found
may serve to reverse, and make
voyd the same.

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1. **I**F there bee any materiall difference or variance betweene the additions in the Originall, the *Cap. Al.* or *Plur.* the Exigent or Procces, and the Iudgment; There is good Cause of error.
2. **I**F the debt in either of them, and the Iudgment do not agree, but differ; There is good Cause of Error.
3. **I**F the Writs bee not ordinarily and duly retourned, and filed with the *Custos Brevium*; There is just Cause of Errour.
4. **I**F there be not Warrants of Attourney duly filed, and put in the Office accordingly, as the Cause requireth; As one for the Plaintife, upon suing forth of the Exigent or upon the entry of the Iudgement; There is also good Cause

Cause of Errour.

For which you are to make search with the Clarke of the Warrants for the time being.

And for all the other Errors you are to search and get Coppies thereof from the *Custos Brevium*, and to conferre the same with the Iudgment as it is entered upon Record with the Prothonotary.

IF the Defendant be arrested by a Writ of *Testatum* in a forraigne County, and no writ of *Cap. ad satisfaciendum* retourned against the Defendant, with a *Non est invent.* in the same County where the action was laid and filed with the *Custos brevium*: There is also good Cause of Errour in the execution, but not in the Iudgment.

5.

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*If the Defendant bee not arrested
and taken in execution, but
would avoyd the same; Then
must he proceed as fol-
loweth.*

First, Hee must get a Coppy of
the Iudgement, with the addi-
tions of the party Defendant; and
of the debt and costs of suite lite-
rally, as it is entered upon the Re-
cord.

And for the due finding thereof,
you must go to the Prothonotaries
Office, and search the Docket of
that Terme, when the Iudgement
was entered; and having found
the Cause, take a note of the num-
ber Roll, whereby to find out the
Iudgement in the Rols at Westm.
And then repaire to the Record in
the Treasury there, and see the
Roll, and take a true Coppy of
the Iudgement in all things, *ut su-
pra.* Then

Then carry the same to the Cur-
fitor of the same County, where
the action is layd, who thereupon
will make you a Writ of Error.

Then you must write the same
Coppy of the Iudgement, very
faire, and the additions, debt and
costs of suite, in a piece of paper;
and underneath the same (if it be
required) set down the Cause of
Errour, which you have found,
or can prove and alleage under the
Attourney's hand, that doth pro-
secute the said Writ of Error.

The forme is thus.

*Glou. β. A. A. nu p de &c. in Com
&c. gen Ald. A. A. de C.
in Com B. gen sum fuit
ad respond D. ff. de pla-
cito deb. 20 l. & 34 s.
4 d. p dam.*

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The cause of Error is for that there is variance between the Originall and the Judgement, or otherwise as you shall finde just Cause.

G. H. p. Ghor. Id. D. p. Def.

Then must you go with the same to the Clarke of the Error (for the time being) together with the Writ of error.

And carry with you foure sureties, such as the validity of the Cause doth require, who will take out the Judgement with the Debt and Costs of suite into his book of Remembrance for payle.

And thereupon they must bee brought with the writ, to the Lord Chief Justice of the Common

mon Pleas (for the time being) and there enter bayle in Recognizance together with the Defendant in double value of the debt: That the Defendant hath good Cause of Error, and shall follow the same writ with effect; And if the Defendant shall happen to bee condemned therein, and not able to prove sufficient Errour therein; Then that the Defendant shall pay the condemnation therein with further costs of suite, such as shall be allowed, or they for him to do the same.

Whereunto the Iudge subscribeth his hand, and thereupon giveth warrant to the said Clarke of the Errour, to make *Supersedeas* one, two, or more, as the Defendant for his indemnity or safeguard from arrest shall require, which writ or writs, the Defendant is to allow with the Sheriffe of the same County or Counties, where

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where hee standeth in danger or feare of execution, before he bee arrested, or the said execution executed: either upon body or goods: Or else the said *Superfideus* is of no force, nor can bee allowed, whereof the Defendant is to have speciall care.

And this may be done as well in the Vacation as Terme time, if the Defendant bee not arrested or have his goods taken in execution by vertue of the said Iudgment.

BVt if the Defendant bee taken in execution, before the former course be taken, then must he not only use all the former proceedings, before hee can bee enlarged, But also take all the courses following, before hee can be freed, which otherwise he might have done.

He

HE must not only sue forth his writ of Error *ut supra*, but also cause the whole Record of all the proceedings from the Originall, and the beginning of the said Cause (if Error bee not found in the entry of the Iudgment it selfe) to bee certified by the said Clarke of the Error out of the Common Pleas into the Kings Bench, and assigne sufficient Cause of Error, such as the Court of Kings Bench shall see good and allow, ingrossed and certified with the said Record by one of the Clarkes, and Attourneyes of the said Court of Kings Bench: And likewise bee brought by writ of *Habeas Corpus*, into the same open Court, in the Terme time only, and there put in Bayle, and enter Recognisance, *Ut Supra*, before hee can have any writ of *Supersedeas* for his

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his discharge: But he committed under the custody of the Marshall of the same Court, and have his *Superfedeas* directed and allowed to, and with the said Marshall, to his great expence and charges; which might have been prevented, had he not been formerly taken in execution.

THe Record being thus certified, and Errour assigned upon the Retourne of the said Writ of Errour: Hee is to take Coppies thereof, and thereupon sue forth a Writ of *Scire fac. ad permuniend.* or give notice to the Plaintife of the said Error.

To which the Plaintiffe may appeare and plead, as he shall see Cause.

But the most usuall and Common Plea is.

In

In nullo est erratum.

OR else he may give way to the allowance of the same, if hee so please or see just Cause.

THe Plaintiffe having so pleaded, and willing to have the said Error argued, and the Iudgement confirmed, if cause shall require.

The Defendant according to his recognisance, must so follow the same with effect, or else hee will be condemned therein.

THe Defendant is then to labour for a day given, for the arguing of the same Errour, if the Cause shall so require; And they in their learned opinions shall thinke fit.

But if the Defendant do delay
his

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his assigning of errors (as usually he will to delay the Plaintiffe) the Plaint. is to sue forth two *Scire fac.* against the Defend. to shew cause why he should not have execution. And if at the retorne of the second *Scire fac.* Errors bee not assigned, Iudgement is confirmed for the Plaintiffe.

Note, That these Causes of error are usually argued and determined, in Sergeants Inne in Fleet-street, if the Terme be kept at London, Otherwise, as the Lord Chiefe Iustice of England shall think fit.

Note, That in this Case upon a writ of error brought upon a Iudgment had in the Court of Common Pleas, and Retorned into the the Kings Bench; to which Court and no other it doth properly belong.

The

The Cause of Errour is onely heard and determined before the Lord Chiefe Iustice of England, the Lord Chiefe Baron of the Exchequer, and the rest of the Judges and Barons of those two Courts, and not before the Iustices of the Court of Common Pleas.

If the Errour bee found and allowed by them to bee sufficient and good, then the said Iudgment is by their full consents and Iudgments to bee reversed and made voyd.

Note, That notwithstanding the reversall thereof, the Plaintiffe may commence a new action against the Defendant for the same Cause, if he so thinke it good, and have just ground for the same.

If

IF the Errour be not found good
and allowed, then is the former
Iudgement affirmed and further
costs for delay of execution al-
lowed to the Plaintiff who may
presently sue forth execution, out
of the Court of Kings Bench, ei-
ther against the Defendant or his
sureties, as he thinketh best, and
prosecute against them, either by
Seire fal. &c. as in the case of spe-
ciall Bayle, *ut supra.*

and good, when the said Iudgement
is by their full content and
assent to be reversed and made
void.

The next thing to be considered
is the reversal of the Iudgement
for error in the law, which may
be done by writ of Error, and
the Court shall have full power to
reverse the same.

The fees in this Case are very uncertain and cannot be expressly set down.

But the proceedings may be these.

FOR search of the Record to find the Error,

For Coppies of the Records,

For the Writ of Error,

For the Lord Chiefe Iustices fee,

For signing Causes of Error,

For putting in Bayle,

For certifying the Record,

For an *Habeas Corpus*,

For the allowing,

For the Retourne,

For the *Supersedeas*,

For the Coppy of the Writ of Error,

For drawing the Diminution, if need require,

For the Coppy thereof,

For entring the Errors and Plea,

For a *Certiorari*, if need require,

For a certificate from the *Custos Brevium*,

H

For

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For entering the same and Dimi-
nution,

For the Warrant of Attorney,

For the Coppies of the books for
the Iudges,

For Counsellors fees,

For affirming the Iudgement,

For the Coppy thereof,

For the *Scire fac.* and entering,

For filing and retorning,

For Attorney's fees,

Cum multis aliis, &c.

Note, That if upon any Iudge-
ment recovered, and had a-
gainst the Defendant, he be taken
in execution or have his body ar-
rested, or his goods extended for
the same; and upon full payment
or satisfaction of the debt and
costs, the Plaintiffe either in per-
son or by his Attourney, do ac-
knowledge satisfaction upon Re-
cord, in the said Court wherein
the

the said Iudgement was entered, and if the Defendant at no time make from thenceforth, or after a release of Errors to the Plaintife, and that there be good cause of error found in the said Iudgement; The Defendant may bring a writ of Error upon the said Iudgement, and upon arguing thereof *ut supra*, the Errours being allowed by the Iudges, and the Iudgement thereupon reversed; The Defendant may sue forth a Writ of Restitution against the Plaintife, and recover back again the full debt and costs of suite specified in the said Iudgement: But if he have made a release, he is voyd of remedy.

Note, That if there be a Iudgement recovered against the Defendant by way of *Nisi prius*, and Verdict of twelve men; Then unlesse hee can finde some good Cause in the Originall or the entering or giving of the said Iudgement

ment after the Verdict so given, and had : He cannot bee admitted to sue forth a Writ of Errour ; For by severall Statutes many great faults, misprisions, or Causes of Error, had or committed in prosecution of the said Cause before the said Verdict, are taken away.

Note also, That if the Defendant bee Outlawed, after judgement, and there bee good cause of errour to be found, as well for or in the said judgement as Outlary, The Defendant may bring a Writ of Errour and bee Bayled for both and have a *Super-sedeas*, as well for the safegard of his body as goods, before they be arrested or taken upon the same.

The severall fees for the removing of any Cause out of a Corporation into the Common pleas, by way of writ of privilege, or habeas corpus, the Defendant having Causes depending in the same Court.

In

IN *primis*, To the Clarke for the
Writ, 8 d.
To the Prothonotary for signing
thereof, 16 d.
For the Scale, 7 d.
To the Iudge for his hand there-
unto, 4 s.
For the Attorney's fee, 3 s. 4 d.
For allowing thereof, 2 s. 8 d.
For the returne of the first Cause,
2 s. 6 d.
For every other Cause, 1 s.
For a Bill of *Mittat Causas* in Lon-
don, 6 d.
For search, 4 d.
To the Sergeant for his fee at
least, 10 s.
For putting in of Bayle before a
Iudge, and for the first cause,
10 s. 8 d.
For every other Cause, 3 s.
To the Prothonotary for filing the
Bayle for the first Cause, 6 s. 4 d.
For every other Cause, 2 s.
For the Attourney's fee, 3 s. 4 d.

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*The fees for putting in bayle upon an
attachment of Priviledge.*

THe Iudges fee 10 s. 8 d.

The entring of the baile

4 s. 4 d.

To the Prothonotaries Clark who
attends with the remembrance
for taking the baile. 1 s.

The Attournies fee 3 s. 4 d.

*The particular charge for getting a
judgement against an Attourney.*

For drawing and ingrossing the
Bill, 1 s. 8 d.

For a rule and calling the Defen-
dant in Court, 8 d.

For filing the Bill with the Custos
Brevium, 4 d.

For entring the Declaration, 1 s.

For the Attourney's fee, 3 s. 4 d.

For the Rule, 4 d.

For entering the Iudgment, 3 s. 4 d.

For the Warrant of Attourney,

4 d.

For

of Common pleas. 103
 For the Coppy of the Iudgement, 1 s. 4 d.
 For the *Ca. & Post diem*, 1 s. 5 d.
 For the Retorne, 4 d.
 For the *Testatum*, 1 s. 7 d.
 For the Attourney's fee, 3 s. 4 d.

*The particular fees where the appa-
 rance is upon the Exigent, and
 after the Defendant is sued to
 the Outlary, after Judge-
 ment.*

For drawing the Declaration, 1 s.
 For entring thereof, 1 s.
 For the Rule, 4 d.
 For entring the Iudgment, 3 s. 3 d.
 For a Warrant of Attourney, 4 d.
 For Coppy of Iudgment, 1 s. 4 d.
 For a *Ca. sa. & Post diem*, 1 s. 5 d.

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For the Exigent, called an Ex-
p^{te}, 1 s. 7 d.

For the Attourney's fee, 3 s. 4 d.

*Where the apparance is upon a new
Originall.*

Pro orig. & Post diem, 1 s. 4 d.
Pro tr. nar. 1 s.

Pro intr. inde 2 s.

Pro Read. Attor. 3 s. 4 d.

*For suing forth an Outlary after the
Writ of Exigent is returned.*

Pro retor. Exigend. ove quater
nosmes, 16 d.

Pro filac. inde, 4 d.

Pro Cap. utl. 1 s.

Pro fead. Attor. 3 s. 4 d.

FINIS.

